

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition No.:** 57-019-15-1-5-01502-16  
**Petitioners:** Michael & Jamie Riedeman  
**Respondent:** Noble County Assessor  
**Parcel No.:** 57-07-08-100-048.000-019  
**Assessment Year:** 2015

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. Petitioners initiated their appeal with the Noble County Property Tax Assessment Board of Appeals (“PTABOA”) by filing a Form 130 dated October 6, 2015. On June 3, 2016, the PTABOA issued its Notification of Final Assessment Determination. Petitioners then timely filed a Form 131 petition on July 19, 2016, with the Board.
2. Petitioners elected to have their appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. On January 31, 2017, the Board’s administrative law judge (“ALJ”), Dalene McMillen, held a hearing. Neither the Board nor the ALJ inspected the property.
4. The following people testified under oath:
  - Michael Riedeman, owner,
  - Kim Carson, Noble County Assessor,
  - Gavin Fisher, Respondent’s expert witness.

**Facts**

5. The property under appeal is a single-family residence with a detached garage located at 10608 North State Road 3 on Cree Lake in Kendallville.
6. The PTABOA determined the following values:  
  
Land: \$34,200            Improvements: \$41,700            Total: \$75,900

7. Petitioners requested the following assessment:

Land: \$34,200          Improvements: \$20,800          Total: \$55,000

### **Record**

8. The official record for this matter is made up of the following:

a. A digital recording of the hearing,

b. Exhibits:

Petitioner Exhibit A:      Form 131 petition,  
Petitioner Exhibit B:      Board's Notice of Hearing on Petition,  
Petitioner Exhibit C:      Form 11 for March 1, 2012,  
Petitioner Exhibit D:      Form 11 for March 1, 2015,  
Petitioner Exhibit E:      Beacon summary report for subject property,  
Petitioner Exhibit F:      Form 130 petition,  
Petitioner Exhibit G:      Form 115,  
Petitioner Exhibit H:      Form 11 for March 1, 2016,

Respondent Exhibit 1:      List of Cree Lake property sales,

Board Exhibit A:          Form 131 petition and attachments,  
Board Exhibit B:          Hearing notice,  
Board Exhibit C:          Hearing sign-in sheet,

c. These Findings and Conclusions.

### **Burden of Proof**

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.

10. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

11. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
13. The assessed value increased from \$50,500 in 2014 to \$75,900 in 2015, which is an increase in excess of five percent. Consequently, Respondent has the burden of proving the 2015 assessment is correct.

### **Summary of the Parties’ Contentions**

14. Respondent’s case:
  - a. Gavin Fisher, an Indiana licensed appraiser, analyzed ten Cree Lake sales that occurred between July 3, 2014, and October 11, 2016. The sale prices ranged from \$65,000 to \$140,700. *Fisher testimony; Resp’t Ex. 1.*
  - b. Mr. Fisher testified that only one of the ten properties sold for less than the subject property’s assessed value. That was the property located at 7902 East Cree Lake North which sold for \$65,000. He noted that sale was a foreclosure sale and thus was disregarded for purposes of his analysis. *Fisher testimony; Resp’t Ex. 1.*
  - c. In analyzing the remaining nine sales, Mr. Fisher found that seven of those properties were in significantly better condition than the subject property, while the other two were very similar to the subject. *Fisher testimony; Resp’t Ex. 1.*
  - d. Specifically, 7928 East Cree Lake North sold on May 13, 2016, for \$82,000. This property is similar to the subject in terms of size, condition, and amenities. Mr. Fisher contends that the property is so similar to the subject that it would not require any adjustments. *Fisher testimony; Resp’t Ex. 1.*
  - e. 7706 East Cree Lake North sold on September 25, 2014, for \$87,500. Mr. Fisher claims that this property would require positive adjustments for the smaller above-grade living area and lack of a garage. On the other hand, he contends it

would require negative adjustments due to the presence of a basement and the overall updated condition. *Fisher testimony; Resp't Ex. 1.*

- f. Mr. Fisher contends that in light of the high degree of similarity between these two comparable properties and the subject property, the 2015 assessed value of the subject property should be between \$82,000 and \$85,000. That said, Respondent is not requesting an increase in assessed value, but is merely requesting that the 2015 assessment of \$75,900 be sustained. *Fisher testimony.*
15. Petitioners' case:
- a. Petitioners contend that the assessment is too high. The original homeowners, who owned the property for approximately 40 years, sold it in 2011 for \$40,000 to an investor. Petitioners purchased the property in 2012 for \$55,000. *Riedeman testimony; Pet'r Ex. E.*
  - b. At the time of purchase in 2012, the property was assessed at \$58,600. In 2014, the assessed value was \$50,500. Petitioners testified they replaced the leaking roof and, as a result, the 2015 improvement value increased by 56%, for a total property assessment of \$75,900. Petitioners contend that they had considered the roof to be routine maintenance, not something that added to the market value-in-use of the property. *Riedeman testimony; Pet'r Ex. D-E.*
  - c. Petitioners claim that the kitchen and bathroom are in poor condition. Petitioners claim that one of the PTABOA members, who was also the realtor that sold Petitioners the property, indicated that because of the condition of the kitchen and bathroom, an obsolescence factor should be applied to the assessment. Petitioners contend that the property also suffers extreme road noise because of the traffic volume and because the road was "chipped and sealed" rather than paved. *Riedeman testimony.*
  - d. Petitioners testified that at the time of their initial appeal they requested an assessed value of \$58,600.<sup>1</sup> However, they subsequently researched the property adjacent to theirs that is similar in size but contains an additional structure. Its assessed value was \$61,000. Based on that, Petitioners believe a fair assessment for their property would be "somewhere in the low 60s." *Riedeman testimony.*

### **Analysis**

16. Respondent failed to provide sufficient evidence to establish a prima facie case that the 2015 assessed value was correct. The Board reached this decision for the following reasons:

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<sup>1</sup> When questioned by the ALJ as to what he believed the value should be, Mr. Riedeman stated that he had indicated \$58,600 "in the 2015 initial appeal." However, on both the Form 130 and the Form 131, Petitioners claimed a total value of \$55,000.

- a. Indiana assesses real property based on its true tax value, which does not mean fair market value, but rather the value determined under the Department of Local Government Finance's ("DLGF") rules. The DLGF's 2011 Real Property Assessment Manual defines true tax value as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in a tax appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *See id.*; *see also*, *Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally recognized appraisal practices. *See Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also* Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).
- b. Regardless of the type of evidence offered, a party must explain how that evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2015 assessments, the valuation date was March 1, 2015. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
- c. Respondent had the burden of proving that the 2015 assessment was correct. Mr. Fisher analyzed two purportedly comparable properties located at 7928 and 7706 East Cree Lake North. In doing so, Respondent essentially is relying on a sales-comparison approach. *See* 2011 REAL PROPERTY ASSESSMENT MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2) (stating that the sales-comparison approach relies on "sales of comparable improved properties and adjusts the selling prices to reflect the subject property's total value."); *see also, Long*, 821 N.E.2d 466, 469.
- d. To effectively use the sales-comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* At 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

- e. Here, the type of analysis required is lacking from Respondent's case. The evidence fails to provide enough information for the Board to conclude the purportedly comparable properties are indeed comparable to the property under appeal. Mr. Fisher did not adequately identify or quantify specific differences between the purportedly comparable properties and the subject property. In addition, the two sales on which Mr. Fisher primarily relied were from 2014 and 2016 and he presented no evidence to relate those sales to the valuation date. Furthermore, although Mr. Fisher is an Indiana licensed appraiser, he failed to indicate whether his analysis conforms to generally accepted appraisal principles and USPAP. Thus, Respondent's sales-comparison analysis lacks probative value.
- f. For the reasons discussed herein, Respondent did not offer enough probative evidence to prove that the 2015 assessment was correct. Therefore, Petitioners are entitled to have the assessment returned to its 2014 level of \$50,500. However, Petitioners requested a value of \$55,000 on both the Form 130 and the Form 131. The Board accepts Petitioners' concession.

### **Conclusion**

- 17. Respondent failed to make a prima facie case that the 2015 assessment was correct. As a result, the assessment would normally be reduced to the previous year's level of \$50,500. However, Petitioners requested a value of \$55,000. Thus, the Board orders that the 2015 assessment be changed to \$55,000.

### **Final Determination**

In accordance with the above findings of fact and conclusions of law, the Board determines that the 2015 assessed value must be changed to \$55,000.

ISSUED: April 5, 2017

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.